

MINUTES

MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on March 3, 1999 at 3:00 P.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Tom Keating (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Glenn Roush (D)
Sen. Mike Taylor (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Larry Mitchell, Legislative Branch
Jyl Scheel, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 120, 3/03/1999; HB 95,
3/03/1999; HB 142, 3/03/1999
Executive Action: HB 95; HB 120

HEARING ON SB 120

Sponsor: **SENATOR TOM KEATING, SD 5, BILLINGS** presented the bill
for **REPRESENTATIVE ROY BROWN, HD 14, BILLINGS**

Proponents:

Tom Richmond, Montana Board of Oil & Gas Conservation, Billings
Gail Abercrombie, Executive Director, Montana Petroleum Assoc.

Opponents: None.

Opening Statement by Sponsor:

SENATOR TOM KEATING, SD 5, BILLINGS, stated **HB 120** was for the purpose of allowing the Board of Oil and Gas to receive some administrative fees from the grants for the orphan well plugging program. The Board of Oil & Gas makes application for a grant to DNRC for Resource Indemnity Trust money. The law states that administrative fees for the project may not be used out of the grant money. The Board of Oil & Gas receives the grant dollars to do the plugging but has to administer the cost of the program from their own budget. This bill allows the use of 2.5% of the grant for the administration of the program.

Proponents' Testimony:

Tom Richmond, Montana Board of Oil & Gas Conservation, Billings, spoke in support of **HB 120** as per **EXHIBIT (nas48a01)**. They were willing to subsidize these grant activities when they had a good cash flow. Due to the low price of oil they cannot afford to subsidize it anymore, this program needs to pay for itself.

Gail Abercrombie, Executive Director, Montana Petroleum Association, spoke in support of **HB 120**. She feels the cost of overseeing these projects by the Board of Oil & Gas should be funded through the grant.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SENATOR GROSFIELD asked if there were administrative fees for any agencies that were receiving these grants? **Bud Clinch, Director, Department of Natural Resources and Conservation,** stated currently there are no administrative fees being paid. The exception being, under the **RIT** program, there are administrative fees being paid to several agencies like **DEQ** and **DNRC** under existing authorizations. It is not necessarily the same as the grant in the bill, but there is a fair amount of precedent in using some of those monies for administrative purposes. **SEN. GROSFIELD** asked if administrative fees were not an acceptable part of a grant request? **Mr. Clinch** stated there are some grants

that, depending on the specific action being presented, may include some sort of oversight and administration. In some cases it may just be part of the ongoing expense by the agency that receives the grant and therefore not covered. There is not a real clear answer to the question. **SEN. GROSFIELD** stated **Mr. Mitchell** had pointed out on page 2 of the bill it specifically precludes the Board of Oil and Gas from receiving administrative costs. It does not indicate any other agency is restricted in this way.

SENATOR TAYLOR asked how the bill affected the **RIT** with sunsetting the trust? **SEN. KEATING** said if the bill does pass and the tax is sunset in 2001-2003, the flow of \$300,000 per year of tax would stop going to the reclamation account, therefore, it does not affect the account other than it gets less money. The account still has a large portion of the interest income.

Closing by Sponsor:

SENATOR TOM KEATING, SD 5, BILLINGS, stated other government agencies do receive administrative costs by direct appropriation through their budgeting process. The statutes specifically prohibit that the grantees may not use administrative costs, this would be an exception to that statutory rule. He urged the committee's support.

EXECUTIVE ACTION ON HB 120

Motion/Vote: **SEN. GROSFIELD** moved that **HB 120 BE CONCURRED IN.**
Motion carried 9-0. **SEN. KEATING** will carry bill to Senate floor.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 10.1; Comments : None.}

HEARING ON HB 95

Sponsor: **REPRESENTATIVE ROBERT STORY, HD 24, PARK CITY**

Proponents:

Bud Clinch, Director, Department of Natural Resources and Conservation

Holly Franz, Montana Power Company

John Bloomquist, Montana Stockgrowers Association

Lorna Karn, Montana Farm Bureau

Opponents: None.

Opening Statement by Sponsor:

REPRESENTATIVE ROBERT STORY, HD 24, PARK CITY, presented **HB 95** which is an update in the water law statute regarding permits and applications. Section 2 clarifies when a permit application is complete and the process. Section 3 deals with the objection process and who can be an objector. It clarifies when they have a valid objection. Section 4 removes the requirement that certified mail is sent to an applicant. Section 5 removes the requirement for an appropriator to give the department, at least, a 30 day notice if he wishes to extend the time to complete a project.

Proponents' Testimony:

Bud Clinch, Director, Department of Natural Resources and Conservation, spoke in support of **HB 95** as per **EXHIBIT(nas48a02)**.

Holly Franz, Montana Power Company, spoke in support of **HB 95**. She proposed an amendment as per **EXHIBIT(nas48a03)**. There are changes on page 8 and 9 that clarify the ability to correct defects in an application. It says if the application is not complete, the Department can return it to the applicant with certain time limits in which to correct that application. The bill, on page 9, says a complete and correct objection also has to be filed. If the objection is incomplete, it is invalid. There is no similar information or language clarifying the Department can take a look at an objection and rule it incomplete and then give the objector an opportunity to make corrections. The language in the amendment clarifies the Department can notify the objector of any defect and that objector then has 15 days to correct the objection.

John Bloomquist, Montana Stockgrowers Association, stated the idea of establishing some timelines was a good idea on the application and the objection process. He agreed with **Ms. Franz'** amendment.

Lorna Karn, Montana Farm Bureau, spoke in support of the bill for reasons given by the previous proponents.

Opponents' Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

REPRESENTATIVE ROBERT STORY, HD 24, PARK CITY, stated he closed.

EXECUTIVE ACTION ON HB 95

Motion: SEN. KEATING moved that HB 95 BE CONCURRED IN.

Motion/Vote: SEN. MCCARTHY moved that HB 95 AMENDMENTS BE ADOPTED. Motion carried 8-0.

Motion/Vote: SEN. KEATING moved that HB 95 BE CONCURRED IN AS AMENDED. Motion carried 8-0. SEN. GROSFIELD will carry bill on Senate floor.

{Tape : 1; Side : A; Approx. Time Counter : 10.1 - 20.3; Comments : None.}

HEARING ON HB 142

Sponsor: REPRESENTATIVE SHIELL ANDERSON, HD 25, LIVINGSTON

Proponents:

Bud Clinch, Director, Department of Natural Resources and Conservation
John Bloomquist, Montana Stockgrowers Association
Don Allen, Western Environmental Trade Association
Lorna Karn, Montana Farm Bureau
Cary Hegreberg, Montana Wood Products Association
Patrick Heffernan, Montana Logging Association
Gail Abercrombie, Executive Director, Montana Petroleum Assoc.

Opponents:

Ira Holt, Ravalli County Fish & Wildlife Association
Tony Schoonen, State Lands Coalition and Skyline Sportsmen Assoc.
George Darrow, Oil Geologist, Former State Senator and Landowner in the Flathead
Harley Harris, Assistant Attorney General representing Attorney General Joe Mazurek as member of the State Board of Land Commissioners,
Rusty Harper, Representing State Auditor Mark O'Keefe as member of the State Board of Land Commissioners

Joe Kerwin, Deputy Secretary of State representing Secretary of State Mike Cooney as member of the State Board of Land Commissioners

Joe Lamson, Representing Nancy Keenan, Office of Public Instruction

Beth Cading, Bozeman

Julia Page, Northern Plains Resource Council

Tary Mockabee, Friends of the Wild Swan

Richard Parks, President of Bear Creek Council

Van Jamison, Montana Wildlife Federation

Bill Holdorf, Skyline Sportsman Association

Betty Waddell, Montana Association of Churches

Anne Hedges, Montana Environmental Information Center

Janet Ellis, Montana Audubon Society

Lorey Thomas, Anaconda Sportsman Club

Denise Roth Barber, Montana Sierra Club

Opening Statement by Sponsor:

REPRESENTATIVE SHIELL ANDERSON, HD 25, LIVINGSTON, presented HB 142 which basically clarifies what is required of agencies in the Department of State Lands. It is brought about in the wake of a case where the court said "when there is a substantial question as to whether the change of use may have a significant effect upon the human environment, an **Environmental Impact Statement** would be required." That leaves a very confusing message and not much guidance as to when an **EIS** would be required on such things as lease renewals for state lands. It was also pointed out by **Justice Gray** in that same decision that **EIS** decisions are generally required under the administrative rules of Montana "for major state actions significantly affecting the quality of the human environment".

He presented an overview of the House Amendment added in Section 1 (3) (B) which says the administrative agency has the opportunity to have all the evidence that is significant in making its decision. This would not allow the agency to be blind sided by waiting until their review was done and then come into the District Court level with new evidence that would make the agency look like they had done an inadequate job. This gives them the opportunity to have all the evidence to put into the equation. The New Section 2 basically says if you simply have a lease renewal or transfer of lease, the terms of the lease do not change nor do the conditions. That is not a new event that would trigger the **Montana Environmental Protection Act (MEPA)**.

Proponents' Testimony:

Bud Clinch, Director, Department of Natural Resources and Conservation, stated **HB 142** is brought forth to help the Department better fulfill their responsibilities associated with managing 5.2 million acres of land and to fulfill their responsibilities to the beneficiaries of revenue generation. **House Bill 142** is an attempt to stem the tide of expansion of **MEPA**. He passed out **EXHIBIT(nas48a04)** and **EXHIBIT(nas48a05)** to illustrate his talk about litigation, expansion of **MEPA** and actions making their ability to carry out their traditional activities very difficult. He then went through the bill to explain the changes and additions. The Department is not trying to do a wholesale exemption of **MEPA**. He feels they have an incredible past performance with **MEPA** as evidenced by the amount of budget and FTE that has been dedicated to that in the past as well as recognition received from various entities as well. He encouraged the committee's support of the bill.

{Tape : 1; Side : A; Approx. Time Counter : 20.3 - 40; Comments : None}

John Bloomquist, Montana Stockgrowers Association, pointed out to the committee **MEPA** is a procedural law not a substantive law. **House Bill 142** codifies some of the principals particularly established in the Federal Court interpretation of the **National Environmental Protection Act (NEPA)**. Case law under **NEPA** is generally influential in interpreting **MEPA**. **HB 142** is not going to gut **MEPA** nor is it going to prevent public input or prevent anyone from litigating a case under **MEPA**. He urged the committee's support.

Don Allen, Western Environmental Trade Association, spoke in support of the bill. The amendment, added in the House regarding evidence, is an important addition to the bill and clears up some misunderstandings that were raised in the House hearing. It is no one's intention to weaken the opportunity for people to participate in the **MEPA** process. The handout provided by **Mr. Clinch** regarding the number of law suits speak volumes about the need for this bill. He encouraged a DO PASS consideration.

Lorna Karn, Montana Farm Bureau, stated this legislation makes a lot of sense for the reasons outlined by the former proponents. She urged the committee's support.

Cary Hegreberg, Montana Wood Products Association, said **MEPA** has been described as a look before you leap statute. It is a procedural statute. **MEPA** was not designed to strangle economic

activity by forcing such exhaustive analysis that agencies and people just give up trying. He hopes the committee will ponder and inquire about the original intent of **MEPA** and whether this bill fosters or detracts from that original intent. He approved the House amendment regarding evidence. He encouraged the committee's support.

Patrick Heffernan, Montana Logging Association, spoke in support of the bill as per **EXHIBIT (nas48a06)**.

Gail Abercrombie, Executive Director, Montana Petroleum Association, spoke in support of **HB 142** and the side boards it puts on these decisions which gives a more focused direction for the decisions the Department has to make. It makes it more streamlined, more efficient, and more clear.

Opponents' Testimony:

Ira Holt, Ravalli County Fish & Wildlife Association, spoke in opposition to **HB 142**. The cause of their lawsuit, *Sheep v. Sheep*, was inaction. In 1991, it came to the Association's attention a new landowner had moved into the southern part of the Bitterroot Valley taking ownership of a ranch that also had some grazing leases on State Land. Domestic sheep were brought onto the lease. Some members of the Association knew there was recent scientific evidence that if domestic sheep came into contact with wild Bighorn Sheep, the Bighorn Sheep died. In 1991, **Mr. Holt** wrote a letter to **Chuck Wright, Department of State Lands in Missoula**, stating their concern in this matter. **Mr. Wright** called him after receiving the letter and stated this could be a problem. He was to do some checking into the matter and call back but they never heard from him again. They started contact with the **DSL** office in Helena to try to reach some agreement on this situation. Over the next two years there was not much action and **DSL** finally said they were not required to do it but they would do an Environmental Assessment (EA). Based on that EA, a decision was to be made on what to do. The **DSL** Director, at that time, published his decision the day he left office. They were in contact with the new director for the next few months. This decision was not appealable and it became obvious it would not be reviewed. They determined their only course of action was to go to court. They went to court and lost in District Court and went on to the Supreme Court. They did present new evidence partially because some of these scientific studies were ongoing. They did not mean it to be new evidence to blind side the agency, they meant it as supporting evidence to support the view there was a problem.

The Supreme Court decision stated the **DSL** did error. Something happened on the ground that said there might be environmental impact and something should be done. Because the lessee was no longer grazing domestic sheep the **DSL** said again they did not want to do anything. The Association asked they write some rules so this same thing did not happen in the future. Finally, after seven years, some rules were adopted in 1998. In their opinion, this bill now says the Department wants to have the right not to do anything if they don't think they need to do something. The Association thinks a better way to clarify the Supreme Court decision, in their case, is to write the rules to say it does not make any difference if a decision has just been made or not, if something happens on the ground that is different than what has been happening for last 80 years, and there is evidence brought which says there is a problem, then **MEPA** is triggered and something should be done. He requested the bill be killed.

Tony Schoonen, State Lands Coalition and Skyline Sportsmen Association, spoke in opposition to the bill as per **EXHIBIT(nas48a07)** and **EXHIBIT(nas48a08)**.

George Darrow, Oil Geologist, Former State Senator and Landowner in the Flathead, spoke in opposition to **HB 142** as per **EXHIBIT(nas48a09)** and **EXHIBIT(nas48a10)**.

{Tape : 1; Side : B; Approx. Time Counter : 0 - 34; Comments : None.}

Harley Harris, Assistant Attorney General representing Attorney General Joe Mazurek as member of the State Board of Land Commissioners, spoke in opposition to the bill as per **EXHIBIT(nas48a11)**.

Rusty Harper, Representing State Auditor Mark O'Keefe as member of the State Board of Land Commissioners, stated Mr. O'Keefe supports the Attorney General's amendments. If the committee adopted the amendments he would support the bill.

Joe Kerwin, Deputy Secretary of State representing Secretary of State Mike Cooney as member of the State Board of Land Commissioners, spoke in opposition to the bill stating Secretary Cooney has long tried to get the public involved. He believes this bill goes too far for many of the reasons stated by **Mr. Harris** previously. He does not think there has been a case that proves this bill is needed. **MEPA** works and continues to work.

Joe Lamson, Representing Superintendent Nancy Keenan, Office of Public Instruction, spoke in opposition to the bill. Sheep v.

Sheep was not a frivolous thing, it was a very substantive danger to the state Bighorn Sheep population which the State of Montana had put considerable resources into developing over the years. In their trust responsibilities, they not only have to look at being prudent land managers and how they manage their land, but how those actions affect the neighbors within that area.

Beth Cading, Bozeman, stated she had been a **National Environmental Protection Act** Planning Compliance Officer for six years for the National Park Service in Yellowstone. **MEPA**, like **NEPA**, provides statutory foundation for guidance in making decisions where environmental values are in conflict with other values. These acts are not designed to eliminate environmental damage from projects but instead they insure an agency decision maker takes environmental factors into account when evaluating the consequences of a project. **MEPA** and **NEPA** are the processes that allow the public to participate in agency decisions. **HB 142** is an over reaction. She also disagreed that, in some cases, state school trust lands should be exempt from environmental review. She urged the committee to kill this bill for the future of Montana.

Julia Page, Northern Plains Resource Council, spoke in opposition to the bill as per **EXHIBIT(nas48a12)**.

Tary Mockabee, Friends of the Wild Swan, spoke in opposition to the bill and stated she had been involved in the past year on a state land timber sale in her neighborhood. Her community cared very much about what changes this sale would incur. They helped shape the outcome by working with DNRC. This was the democratic process at work. She would like to think public involvement is still welcomed and honored in America.

Richard Parks, President of Bear Creek Council, spoke in opposition of the bill as per **EXHIBIT(nas48a13)**.

Van Jamison, Montana Wildlife Federation, spoke in opposition to **HB 142**. In all the time he has been involved in **MEPA** he has never seen citizens ambushing agencies be a problem. When agencies get into problems, it is invariably because they have ignored citizens. The lawsuits filed come from agencies that simply do not listen and do not respond. They then become unhappy when citizens take them to Court to try to make them do what they are supposed to do. He suggests Sections 1 and 3 of the bill are nothing more than a shield for state government employees against citizens with legitimate issues. He requested a DO NOT PASS recommendation from the committee unless it would be amended with the Attorney General's amendments.

Bill Holdorf, Skyline Sportsman Association, spoke in opposition to the bill. He referred to **Mr. Bloomquist's** testimony where he stated there was about five areas that would not be affected. If they are not being affected, the bill is not needed.

Betty Waddell, Montana Association of Churches, spoke in opposition to the bill as per **EXHIBIT(nas48a14)**.

Anne Hedges, Montana Environmental Information Center, spoke in opposition to the bill and stated most of their concerns had already been addressed. She passed out a handout, **EXHIBIT(nas48a15)**, which shows all the agencies that have to comply with **MEPA**. One agency out of eight is asking that you change **MEPA** for everyone. It also shows the cases **DNRC** has won and lost. The **MEPA** cases they have won they claim they won because the court has restricted evidence. Why don't citizens have the right to say the Department ignored them and bring in evidence which supports that.

Janet Ellis, Montana Audubon Society, spoke in opposition to the bill as per **EXHIBIT(nas48a16)**.

Lorey Thomas, Anaconda Sportsman Club, stated he liked to be last to make a good impression on the committee. Do Not Pass **HB 142**.

Denise Roth Barber, Montana Sierra Club, spoke in opposition to **HB 142**. She stated in any sports activity, you would never have your best offense wait until the last quarter or inning and say because we have these great offensive moves, let's surprise the opposing team and play them at the end. What if you lost? She resents the implication that they wait in the bushes and surprise people at the end because they do not.

Questions from Committee Members and Responses:

SENATOR COCCHIARELLA questioned if **REP. ANDERSON** knew **George Darrow** and he indicated he did. She then stated he is the author of the **MEPA** act. The Environmental Quality Council gives a **George Darrow** award every year to someone who implements **MEPA**. The Darrow award was recently given to the Forestry Division of **DNRC**. She asked if he had considered bringing this issue before **EQC** for study? **REP. ANDERSON** said this legislation was presented to him just prior to the session and he was not certain the **EQC** had met at that time. The legislation is sound in principle.

SENATOR COCCHIARELLA wondered if this bill had been brought before **EQC** for consideration? **Mr. Clinch** stated they responded to **EQC** in September with a list of all the Department's

legislation that was prepared. He presented a 30 minute discussion at the December meeting regarding this bill. **SEN. COCCHIARELLA** stated they appreciated that. Would the Department and sponsor consider allowing **EQC** to address this topic through some resolution or statutory study that says **EQC** needs to look at this again? **Mr. Clinch** stated he would not be supportive or willing to withdraw this legislation with the understanding the **EQC** would do a study.

SENATOR GROSFIELD questioned if ag leases are five years? **Mr. Clinch** stated the standard ag and grazing leases are ten years and they review between 800-1100 of them annually.

SENATOR GROSFIELD asked if it was the intention that every lease renewal ought to go through **MEPA** review? **Mr. Jamison** said no, not unless something has changed in the interim and that something has the potential to create significant impacts. **SEN. GROSFIELD** asked what if something comes up in year four on a ten year lease? What is fair in that regard given there is a contract in place? **Mr. Jamison** said the agency would be bound to honor its contractual agreement unless honoring that agreement would cause them in some way to violate the law. **SEN. GROSFIELD** stated he presumed contracts had verbiage regarding compliance with the law. **Mr. Clinch** stated that was correct and all lessees are required to abide by all applicable laws.

SENATOR GROSFIELD asked if he was advocating a mid-term **MEPA** evaluation? **Mr. Jamison** stated he did not think there should be a mid-term evaluation. He thinks **MEPA** takes a look at actions of state government and once you have acted, then you honor your contractual obligation.

SENATOR GROSFIELD asked the same question of **Mr. Harris** for his interpretation. **Mr. Harris** stated he did not think it would be a breach of contract on the part of the Department if four or five years down the road they went to the lessee and said they had evidence that the method of grazing being used is causing some harm and under the multiple use mandate the practices need to be modified. The amendments are trying to address this situation. They also propose to put some very strict timelines in place. If a citizen thinks there is a problem, they would have had an obligation, under the amendments in the sheep case, to come forward with their concern in 30 days and file suit in 90 days otherwise the Department then knows it is in compliance and nothing happens.

{Tape : 2; Side : A; Approx. Time Counter : 0 - 42; Comments : None.}

SENATOR GROSFIELD stated under the terms of a lease, can the Department come in and comment? **Tom Butler, Trust Lands Attorney for DNRC**, stated the Sheep v. Sheep case changed the way **MEPA** was administered. Previously the Department believed **MEPA** was triggered by a state action. Prior to the Sheep v. Sheep case the Department tried to work with the lessee if there was a problem. If there was a violation of law, the only mechanism they could use would be lease cancellation. In the Sheep v. Sheep case there was no violation of law, there was no substantive statute that forced any action. The litigants in that case believed that no sheep grazing should occur on state land and in response brought their case to District Court.

This case has definitely changed the way the Department is doing business. Now they are subject to invalidating any lease in mid-term and essentially violating the lease contract between the Department and the lessee. People take these leases in good faith and 97% are fine people and do a good job out on the land. They can still cancel these people for substantive violations of the law but what is most troublesome to them is the concept of passive **MEPA** where the Department is not active in anyway. Through the Supreme Court decision **MEPA** has been transformed into reviewing the actions of third parties under previously authorized contracts.

SENATOR TAYLOR questioned if the bill was challenged in its present state, what would the challenge be? Is the bill Constitutional? **Mr. Harris** stated this was a hard question to answer. There is a school of thought out there that says any action by the legislature that might erode on the ability of the public and people to protect that would be a challenge vote.

SEN. TAYLOR asked if he had reviewed the Attorney General's amendments? **Mr. Clinch** stated yes and that he disagreed with them. **SEN. TAYLOR** said if this bill were to pass, would it reduce the cost of doing business? **Mr. Clinch** stated if the bill were to pass certainly the cost associated with litigation would be reduced.

SENATOR GROSFIELD stated did the legislature, at the time of adoption, think **MEPA** would end up being such a significant portion of state natural resource agencies with 27% of the FTE's in the lands department being devoted just to **MEPA** compliance? **Mr. Darrow** stated he did not have any knowledge of current state budget or DNRC or DEQ budgets. He would observe that the **MEPA** process is sometimes elaborated on to the extent that **MEPA**, instead of being a straight forward effort to understand and define the consequences of an environmental action becomes a programmatic ritual of filling in the blanks of developing

appendices and data of an item. From a public viewpoint, this sometimes ends up doing more to obscure the impact statement than it does to explain and clarify them. He is surprised that the number is that high.

SENATOR GROSFIELD stated in some of cases, **MEPA** seems to border on being used substantively, especially in the situation where new information is being brought in after the fact. Do you see that as a problem? **Mr. Darrow** stated **MEPA** is basically a requirement that state agency people make a best efforts attempt to determine the truth and outline the consequences of their actions. Over the years it has become a ritual of filling in the blanks which requires a lot of manpower. The real thought applied to achieving the purposes of **MEPA** sometimes don't seem to come to the top.

SENATOR CRISMORE questioned how much money had been tied up in the timber sale on the Swan and why was it in litigation the last time? **Mr. Clinch** said he was not sure he could give an accurate dollar amount on the Mid-Soup Timber Sale. Litigation started in 1993. In 1994 they withdrew the timber sale and agreed they would go forth and do an EIS. Over the course of two years they redrafted the complete timber sale and included several mitigations brought forth by the plaintiffs. They took that through the public process and ultimately to the Land Board where they offered approval. The timber sale was offered again and they were litigated a second time by the same plaintiffs. This time in Court, the Plaintiffs brought up some of the same issues with new evidence that the Department had not totally mitigated all their concerns. A new issue brought up this time was, this sale now had been reduced in volume so much and such an exorbitant amount of money had been spent doing the analysis, it was now a "below cost sale" which violated their trust mandate because they were not making any money on this sale. Currently the sale has been enjoined from further harvest. The time lines were about to expire when harvest began just before Christmas. Within about nine days the Court issued an injunction. The injunction hearing was held last week and the Judge refused the Department's request to remove the logs that have been harvested and which remain on site. The Judge further refused their request to implement an injunction bond. They have lost four times now on this sale. **SEN. CRISMORE** said everytime the Department had lost, they went back to Court and thought it was in place, with the agreement of the Land Board? **Mr. Clinch** stated each time they have gone back they have brought on a new, higher level of experts. Each time they ultimately had to take back the proposal to the Land Board. Like the Department, the Land Board believed an adequate analysis had been done and they had a defensible position.

SENATOR GROSFIELD stated it seems a bit much to go through lawsuit after lawsuit with the Land Board agreeing each time to finally get down to the argument that too much money has been spent because of all these lawsuits. That is not what **MEPA** is all about, that is not what environmental analysis is about and it certainly is not what good government is about. Do the Attorney General's amendments help with this situation? If not, what can be done to deal with this? **Mr. Harris** stated he did not have the intimate knowledge of this timber sale that the Director does. In general, it seems to be excessive. The argument raised in the fourth round about now so much time has been spent it is below cost seems to be a little far fetched. You can get into a situation where the Court says one thing and the Legislature does not like it, you either have to micro manage against every conceivable theory out there or at a certain point you have to trust the Court sooner or later to get it right. The Department is concerned that in some cases they have still not gotten it right and that is why they are here today. The amendments to the evidence portion, simply suggested they do what is done in any other administrative procedure act context and if there is new evidence send it back to the agency. The current bill, as amended in the House, does that.

Closing by Sponsor:

REPRESENTATIVE SHIELL ANDERSON, HD 25, LIVINGSTON, stated he did not feel the opponents had addressed the crux of what this bill does and instead used their standard anti-MEPA bill arguments. The bill was born with the Sheep v. Sheep case. The Department addressed the problem as it saw was adequate. There was some dispute between **Mr. Holt** and his group that it was not adequate so they went to Court. The question of whether or not what the Department did was adequate in that case was not addressed. To get to the point where the Court could say in their decision, they had to do an EIS, they took this meandering route through a number of very loosely related federal case law to get to the point. In their wake, they left a total lack of guidance to state agencies attempting to comply with the critically important **MEPA** and to State Courts attempting to insure such compliance. This bill is a reasonable approach in trying to clarify what the agency is responsible for under the terms of **MEPA**. There is nothing in the bill that precludes good judgement on doing an environmental assessment or environmental impact statement.

{Tape : 2; Side : B; Approx. Time Counter : 0 - 19; Comments : None.}

ADJOURNMENT

Adjournment: 5:40 P.M.

SEN. WILLIAM CRISMORE, Chairman

JYL SCHEEL, Secretary

WC/JS

EXHIBIT (nas48aad)